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October 17, 2019

**By ECF**

Hon. Vincent L. Briccetti  
United States District Judge  
United States Courthouse  
300 Quarropas Street  
White Plains, NY 10601

**Re:** Victoria Malone v. Town of Clarkstown, et al.  
Docket No. 19-cv-05503 (VB)  
Our File No.: 12129.00297

Dear Judge Briccetti:

We represent the Town of Clarkstown, the Town Highway Department, Andrew Lawrence, David Salvo, Robert Klein, and Tucker Connington (the "Town Defendants") in the above-captioned matter. We submit this joint letter on behalf of all defendants, seeking a stay of the preliminary conference scheduled for October 23, 2019 in the above-captioned matter. As set out below, upon reviewing Plaintiff's amended complaint filed on October 15, 2019, all of the defendants in this matter plan to file motions to dismiss. If successful, the motions would have a significant effect on the scope of discovery in this case. Consequently, we ask that the preliminary conference scheduled for October 23, 2019 be stayed pending the outcome of the motions to dismiss. Plaintiff objects to this request.

Plaintiff filed her original complaint in this matter on June 12, 2019 against the Town of Clarkstown, the Town Highway Department, and seven individual defendants. On September 3, 2019, the Town Defendants filed a motion to dismiss the complaint in part and for a more definite statement. Defendants Wayne Ballard, Frank DiZenzo, and Brian Lillo filed answers to the complaint. On September 12, 2019, this Court issued a notice of initial conference set for October 23, 2019.

On September 20, 2019, Plaintiff informed the Court that she intended to amend the complaint. The same day, the Court ordered that the amended complaint be filed by October 4, 2019. On September 30, 2019, Plaintiff wrote to the Court seeking an adjournment of the deadline to file the amended complaint, and the Court granted an adjournment to October 15, 2019. Plaintiff filed an amended complaint on October 15, 2019.

In her amended complaint, Plaintiff addressed some, but not all, of the deficiencies raised by the

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Town Defendants in their motion to dismiss. One of the Town Defendants' primary arguments is that some of Plaintiff's claims are barred by a Release she signed in April 2016 (*see* Release at Document 57-2) and also by the statute of limitations. These arguments still apply to Plaintiff's amended complaint, and consequently, the Town Defendants plan to file a new motion to dismiss, in part, and for a more definite statement. Additionally, Defendant Ballard intends to file a motion to dismiss all claims against him, Defendant DiZenzo plans to file a motion to dismiss in part, and Defendant Lillo is also considering a similar motion.

If the motions to dismiss are successful, the scope of discovery would be significantly more limited. For example, Plaintiff's complaint contains allegations dating back to 2003, but under the Release all discovery pre-dating April 2016 would likely become irrelevant, as would any discovery relating to Mr. Ballard. Accordingly, in the interests of efficiency and preservation of judicial resources, all defendants request that the Court stay the preliminary conference and any discovery in this matter until the motions to dismiss are decided.

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

/s/ John M. Flannery